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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/253,783	02/22/1999	SHINICHI HATAE	35.C13342	6059

5514 7590 05/21/2007
FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER

HO, DUC CHI

ART UNIT	PAPER NUMBER
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2616

MAIL DATE	DELIVERY MODE
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05/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/253,783	HATAE ET AL.	
	Examiner	Art Unit	
	Duc C. Ho	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8-11,21,22,24,28,34-38,40,41,43-46,48 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,24 and 28 is/are rejected.
- 7) ☒ Claim(s) 8-11, 21-22, 34-38, 40-41, 43-46, and 48-49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 24, and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,002,964. Although the conflicting claims are not identical, they are not patentably distinct from each other because

Regarding claim 1, see lines 1-13 (see claim 1 of the patent 7,002,964 at col. 31).

Regarding claim 24, see lines 1-15 (see claim 1 of the patent 7,002,964 at col. 31).

Regarding claim 28, see lines 1-15 (see claim 1 of the patent 7,002,964 at col. 31).

For claim 1, Applicant merely broadens the scope of claim 1 of U.S. Patent 7,002,964 by eliminating the limitation “wherein the controller is adapted to notify the source node and the one or more destination nodes of first information representing the logical connection and second information that is unique to the controller”, and replacing the limitation “each of the one or more destination nodes includes a receiving buffer, and is adapted to store each segment data in the receiving buffer” with “to set a segment size in accordance with the reception capability of a destination node”.

For claim 24, Applicant merely broadens the scope of claim 1 of U.S. Patent 7,002,964 by eliminating the limitation “wherein the controller is adapted to notify the source node and the one or more destination nodes of first information representing the logical connection and second information that is unique to the controller”, and replacing the limitation “each of the one or more destination nodes includes a receiving buffer, and is adapted to store each segment data in the receiving buffer” with “to set a segment size in accordance with the reception capability of a destination node”.

For claim 28, Applicant merely broadens the scope of claim 1 of U.S. Patent 7,002,964 by eliminating the limitation “wherein the controller is adapted to notify the source node and the one or more destination nodes of first information representing the logical connection and second information that is unique to the controller”, and replacing the limitation “each of the one or more destination nodes includes a receiving buffer, and is adapted to store each segment data in the receiving buffer” with “to set a segment size in accordance with the reception capability of a destination node”.

It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184

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(CCPA). Also note Ex Parte Raine, 168 USPQ 375 (bd. App. 1969); therefore omission of a reference element whose function is not needed would be obvious to one skilled in the art.

Allowable subject matter

3. Claims 8-11, 21-22, 34-34-38, 40-41, 43-46, and 48-49 would be allowable if the base claims overcome the rejection(s) under the nonstatutory double patenting rejection, set forth in this Office action.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Ho whose telephone number is (571) 272-3147. The examiner can normally be reached on Monday through Friday from 7:00 am to 3:30 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached on (571) 272-3134.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Ho whose telephone number is (571) 272-3147. The examiner can normally be reached on Monday through Friday from 7:00 am to 3:30 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached on (571) 272-3134.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner



Duc Ho

05-14-07